IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6728 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

MERAJBHAI VARVABHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

MR NIGAM R SHUKLA for Petitioner

MS.SIDDHI TALATI ASSISTANT GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/11/98

ORAL JUDGEMENT

The petitioner has filed this writ petition under Article 226 of the Constitution of India containing two prayers, one in the nature of certiorari for quashing the detention order dated 9.2.1998 and another for habeas corpus directing immediate release of the petitioner from illegal detention.

The facts giving rise to this petition are that the Police Commissioner, Ahmedabad City in exercise of powers under section 3(2) of Prevention of Antisocial Social Activities Act, 1985, (for short 'PASA') passed the impugned order of detention and simultaneously furnished the grounds of detention to the petitioner. From the grounds of detention it seems that on account of registration of three criminal cases under various sections of the Indian Penal Code and Bombay Police Act and also in view of two incidents narrated by the four witnesses who preferred to keep their identities and addresses secret and further in view of allegation of antisocial activities of the petitioner he was considered to be a dangerous person within the meaning of section 2(c) of the PASA Act. As such the impugned detention order was passed.

This order has been challenged by the learned Counsel for the petitioner on two grounds.

The first is that the order of detention is bad in law in as much as the petitioner was in judicial custody on the date the impugned order was passed. This contention has absolutely no merit. There is no absolute prohibition that the order of detention cannot be passed when the detenu was already in judicial custody in connection with some other case. The only safeguard is that the Detaining Authority must be aware that the detenu was in judicial custody on the date when the detention order was passed and further he should be aware that on being released on bail the detenu is likely to indulge in similar activities. On these two points awareness of the Detaining Authority is fully reflected in para 11 of his counter affidavit. The Detaining Authority was also aware that in two other criminal cases registered with two police stations the petitioner was enlarged on bail. He was also apprehending that the petitioner may be enlarged on bail in the third case and thereafter he may continue similar activities. If the Detaining Authority was of the view that on two previous occasions after being enlarged on bail, the petitioner committed like activities his apprehension or subjective satisfaction that the petitioner on being released on bail in the third case may continue to involve in similar activities cannot be said to be unfounded or unreasonable. Thus, on this ground the order of detention cannot be quashed.

Another contention has been that the activities of the petitioner were not prejudicial to the maintenance

of public order, hence, the detention order could not be passed. It was argued that there is distinction between law and order and public order. Relying upon the Apex Court's decision in Smt. Tarannum Vs. Union of India and others, JT 1998(1) S.C.486, it was urged by the learned Counsel for the petitioner that the impugned order of detention is bad in law. In this case, the Apex Court considered the incident of looting inside the house of the victim. Subsequent incidents were also taken into consideration by the Apex Court and it was found that those incidents were isolated and had no connection with the main incident dated 16.2.1997. Even the incident of looting inside the house of the victim was considered to be a law and order problem and not an activity prejudicial for maintenance of public order. The distinction between public order and law and order was considered in this case and was also considered in previous cases by the Apex Court.

The requirement therefore is that the activities can be said to be prejudicial to maintenance of public order when even tempo of life of the locality or society is disturbed from such nefarious or prejudicial activities of the detenu. If the activities of the detenu are such which disturb peace and tranquility for a considerable time in particular locality it can be said that such activities are prejudicial to the maintenance of public order. Whenever any offence is committed by a person in the broad day light or in the evening it can be presumed that some disturbance is likely to be created and normal routine of the persons of that area is likely to be disturbed. But such disturbance cannot be said to have disturbed the public order and as such the activities cannot be said to be prejudicial to maintenance of public order.

The Apex Court in the case of Smt.Tarannum (Supra) has taken note of the fact that the activities of the petitioner which created law and order problem for the administration were rightly taken care of and the detenu was booked under relevant sections of the Indian Penal Code. Secondly, according to the Apex Court, if the petitioner was booked for certain offences for which the law and order situation stood disturbed. On the same ground subsequently it cannot be said that there was disturbance of public order. All the three cases mentioned in the grounds of detention which related to law and order problem were rightly tackled by the authorities as the criminal cases were registered against the detenu.

So far as other incidents in para 2 of the grounds of detention are concerned they are as vague as they could be . No date, time and place of such incident is narranted. On such vague allegation it cannot be said that at any point of time on a particular date public order was disturbed from the alleged activities of the petitioner. The learned Assistant Government Pleader contended on the basis of pronouncement of this Court in Gopal Gangaram Nepali Vs. Commissioner of Police 1996(3) GLR 823, that repeated involvement of the petitioner in such nefarious activities had the effect of disturbing public order. However, each case has to be considered on the strength and merits of its facts. As indicated above, general allegations in para 2 of the grounds of detention are found to be quite vague. So far as registered criminal cases against the petitioner are concerned the petitioner has already been booked under relevant sections of the IPC and it does not constitute disturbance of public order.

So far as activities of the petitioner in compelling one daughter of a lady to commit suicide is concerned it seems that the case registered at sr.no.3 is on account of that activity in as much as it seems to be under sections 306 and 114 IPC which is pending investigation. Moreover, on such single activity it cannot be said that the public order in the locality was disturbed.

So far as the two incidents dated 14.1.1998 and 25.1.1998 are concerned, it appears from the grounds of detention that four witnesses have supported these incidents. The witnesses did not disclose their identity nor on such incidents any case was registered. In the first incident of 14.1.1998 there is mention that because of show of Rampuri Knife an atmosphere of fear was created in the area. It was not clear from this allegation whether the atmosphere of terror and fear was temporary or it lasted for few days. Moreover if the petitioner was in the habit of moving with Rampuri Knife, there was no difficulty with the police to apprehend him and book him under section 25 of the Arms Act. No such case seems to have been registered against the petitioner. Beating by kicks and fists to the witness or the victim per se does not constitute an incident which was likely to create disturbance of public order. Thus, this incident between the petitioner and two persons was hardly enough to constitute disturbance of public order.

So far as the second incident of 25.1.1998 is concerned here also the same comments are required as in

relation to first incident. The routine and stereotype narration seems to have been made by the two witnesses but such isolated incidents do not amount to activities prejudicial to the maintenance of public order.

From the activities of the petitioner the Detaining Authority was justified in coming to subjective satisfaction that the petitioner is dangerous person within the meaning of section 2(c) of the PASA Act in as much as he was habitually committing offences punishable under chapters XVI and XVII of the IPC. But merely on this subjective satisfaction the order of detention could not be passed. Further, subjective satisfaction of the Detaining Authority was needed that such activities of the petitioner were prejudicial to maintenance of public order. Since on the second condition the subjective satisfaction of the Detaining Authority can be said to be mechanical the order of detention cannot be sustained. It has therefore to be quashed.

For the reasons stated above the writ petition succeeds and is allowed. The impugned order dated 9.2.1998 is quashed. The petitioner shall be released from custody forthwith unless he is required in connection with some other criminal case.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt